

1 John Steelman CDCR # D-30388
2 Folsom State Prison 1-C4-02
3 P.O. Box 950
Folsom, CA 95763

ORIGINAL

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5 **FILED**
6
7

MAR 03 2008

8 **NO. 45878**

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE

12 **IN THE UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **GILMORE**

15) **CASE NO. _____**

16 Plaintiff-Appellant,

17) **DECLARATION OF JOHN
18 STEELMAN; MEMORANDUM
19 OF LAW TO SUPPORT MOTION
20 SEEKING ADMINISTRATIVE
21 RELIEF UNDER CIVIL L.R.
22 7-11**

23 **v.**

24 **PEOPLE OF THE STATE OF
25 CALIFORNIA**

26 Defendant-Appellee.

27

28

1 **DECLARATION OF JOHN STEELMAN:**2 I, John Steelman, hereby declare that I am the movant in the above
3 entitled action, and the following is true and correct.4 1. I am a State prison inmate, in the custody and control of the
5 California Department of Corrections and Rehabilitation (CDCR), and
6 under the immediate custody and control of Mr. M.C. Kramer, Warden
7 of Folsom State Prison (F.S.P.), in Represa California.8 2. I was committed to the California Department of Corrections (now
9 the California Department of Corrections and Rehabilitation, here-
10 inafter "CDCR"), May 21, 1986, for the term of 15 years-to-Life,
11 and been continuously incarcerated with no parole date established.12 3. I am a member of the "Gilmore" plaintiff class in which the above
13 case has been decided in this Court, and consent decrees stipulated
14 to by the parties and issued by this Court.15 4. I am invoking the protection afforded by this Court in its Order
16 Settling and Dismissing Action, Sept. 28, 1978, stating that the
17 above named action shall be dismissed "subject to the right of
18 plaintiffs to file a petition with this court to seek enforcement
19 with the provision of this Court's order of October, 16, 1972."20 5. I have been unable to research, prepare, and present a petition
21 to the California Court of Appeal since June 2006 due to the CDCR's
22 denial of adequate access to a current legal library, and current
23 rules and regulations mandated by CDCR administrative regulations
24 and the Gilmore Consent Decree to be available to State prisoners.25 6. I have suffered, and still suffer from the actual injury of de-
26 nial of the ability to file a habeas corpus petition or responsive
27 pleading in any State court with proper preparation and research

1 due to the inadequacies of the prison law library, which due to in-
2 carceration and poverty is my only source of legal materials.

3 7. I was transferred to F.S.P. in February 2003, and I have been as-
4 signed to work in the Folsom State Prison (F.S.P) Library for a pe-
5 riod of four years (June 2003 thru June 2007).

6 8. During the entire time I have been here I have tried every means
7 available to me to ensure the completeness and maintenance of up-
8 to-date materials in the F.S.P. Legal Library.

9 9. For the duration of my time at this prison, the Legal Library has
10 never once been up-to-date and current in all "Gilmore Collection"
11 mandated legal materials.

12 10. I have repeatedly pointed out the specific deficiencies in the
13 Gilmore Collection to F.S.P. Librarians and Supervisors due to my
14 work assignment, and separately utilized the CDCR Inmate Appeal
15 (CDC-602) procedures as an individual inmate without success.

16 11. In support of the above allegations, I present the following
17 facts and support same with the identified Exhibits to this Motion.

18 12. I gave a copy of the CDC Memorandum - January 22, 2002 - "Ap-
19 proval To Use Additional Legal Title For An Outdated Mandated Ti-
20 tle" - Exhibit "A", to F.S.P. Library Staff approximately June
21 2003. The memo from the CDC Principle Librarian intends to "provide
22 inmates with up to date, accurate information on habeas corpus, in-
23 mate libraries are advised to add" a new publication.

24 13. This book set was ordered at F.S.P. previously, but the last up-
25 date to set was received in 2002.

26 14. I cited the lack of updates to this books set as "deficiencies"
27 in the "Gilmore Collection: Missing Volume" list submitted to

1 F.S.P. Library Staff beginning in October 2004 (Exhibit D); Decem-
2 ber 2004 (Exhibit E); July 2005 (Exhibit F); September 2005 (Ex-
3 hibit G); March 2006 (Exhibit H); June 2006 (Exhibit J); and Octo-
4 ber 2006 (Exhibit M). I was directed to delete this entry as "non-
5 mandated" material prior to the December 2006 listing (Exhibit O).

6 15. I submitted the issue to CDCR on an Inmate Appeal, July 31,
7 2006, Exhibit S. The First and Second Level Appeal Decisions at the
8 F.S.P. level both affirmatively refuse to follow the CDCR Principle
9 Librarians "advice."

10 16. Exhibit S - Director's Level Appeal Decision, Section III (dated
11 March 7. 2007) states; "The Director's Level of Review contacted
12 Ms. J. Stuter, CDCR Principle Librarian in regard to expectation
13 for the Law Libraries." The response goes on to say nothing spe-
14 cific or address movant's allegations stated in my Inmate Appeal.
15 Note that Ms. Stuter issued Exhibit A in performance of her duties
16 as CDC/CDCR Principle Librarian.

17 17. The mandated Gilmore Collection includes two (2) habeas corpus
18 references from 1970. The Antiterrorism and Effective Death Penalty
19 Act of 1996 entirely changed the landscape of habeas corpus in
20 America, while CDCR and F.S.P. consider it "adequate" to provide
21 1970 references to the inmate population.

22 18. I compiled the Legal Library Book Disposal Inventory, Aug. /
23 Sept. 2004 - Exhibit B. Due to lapse of all legal subscriptions ex-
24 ceeding a one-year period from 2002 thru early 2004. The following
25 sets of law books were repurchased and shelved in July 2004:

1 West's Federal Practice Digest 4th Ed. (357 volumes);
2 U.S. Supreme Court Reports - Lawyer's Ed. 2nd (161 vol.s);
3 West's California Digest 2d Ed. (117 vol.s);
4 Deering's Annotated California Codes (221 vol.s);
California Jurisprudence (Cal.Jur) 3rd Ed. (115 vol.s);
West's United States Code Annotated (U.S.C.A.) (350 vol.s).

5 19. Due to the expiration of all mandated Gilmore Collection mate-
6 rial CDCR decided it was easier to repurchase the above listed sets
7 than to order individual replacement volumes. Note that U.S. Su-
8 preme Court Reports Lawyer's Edition books did not need to be com-
9 pletely replaced, only supplemented for the missing volumes issued
10 after the subscription's expiration.

11 20. I began to compile the missing and out-of-date legal materials
12 in the F.S.P. Law Library into the "Gilmore Collection: Missing
13 List as of July 19, 2004 - Exhibit C, and presented this listing to
14 my immediate supervisors - F.S.P. Librarians - for replacement
15 and/or ordering. Note the lapsed subscription for: West's Federal
16 Supplement 2d; Federal Reporter 3d; Supreme Court Reports (no
17 listed Final Editions received) California Reporter 2d and 3d; and
18 all Shepard's Case Name Citators expired November/December 2002.

19 21. I prepared another Gilmore Collection: Missing List as of Octo-
20 ber 16, 2004 - Exhibit D. Note lapsed subscription for: Barclay's
21 California Code of Regulations (CCR) - since December 2003; West's
22 Federal Supplement 2d; Federal Reporter 3d; Supreme Court Reports
23 (missing all 124 S.Ct. and listed Final Editions); California Re-
porter 2d and 3d; Shepard's - all Case Name Citators expired
24 Nov./Dec.2002 and missing books since 2002, all other Shepard's Ci-
25 tations expired in July 2004. This list includes request for order
26 of up-to-date Habeas Corpus Practice & Procedure for AEDPA purposes
27 (see Exhibit A).

1 22. I prepared another Gilmore Collection: Missing List as of Decem-
2 ber 4, 2004 - Exhibit E. Note lapsed subscription for: Barclay's
3 California Code of Regulations (CCR) - since December 2003 (one (1)
4 year); West's Federal Supplement 2d; Federal Reporter 3d (Advance
5 Sheets renewed but a 20 week gap exists in case law); Supreme Court
6 Reports (missing all 124 S.Ct. and listed Final Editions); Califor-
7 nia Reporter 2d and 3d (missing approx. 40 weeks case law);
8 Shepard's - all Case Name Citators expired Nov./Dec.2002 and miss-
9 ing books since 2002, all other Shepard's Citations expired in July
10 2004; West Federal Practice Digest 4th - Pocket Part shipment in-
11 complete (obsolete) noted. This list includes request for order of
12 up-to-date Habeas Corpus Practice & Procedure for AEDPA purposes
13 (see Exhibit A); First request for disposition of duplicate books.

14 23. I prepared another Gilmore Collection: Missing List as of July
15 15, 2005 - Exhibit F. Note lapsed subscription for: West's Federal
16 Supplement 2d; Federal Reporter 3d (Advance Sheets renewed but a 20
17 week gap exists in case law); Supreme Court Reports (no listed Fi-
18 nal Editions received) California Reporter 2d and 3d (missing ap-
19 prox. 40 weeks case law); Shepard's - Missing Hardbound Supplements
20 issued during subscription lapse 2002 - 2004; Law Week subscription
21 stopped at Vol. 73, No. 34, March 15, 2005; West Federal Practice
22 Digest 4th - Pocket Part shipment incomplete (obsolete) noted since
23 Dec. 2004. List includes request for order of up-to-date Habeas
24 Corpus Practice & Procedure for AEDPA purposes (see Exhibit A).

25 24. I prepared another Gilmore Collection: Missing List as of Sep-
26 tember 7, 2005, Note - Exhibit G. Note subscription for: West's
27 Federal Supplement 2d; Federal Reporter 3d (Advance Sheets renewed
28 but a 20 week gap exists in case law); Supreme Court Reports (no

1 listed Final Editions received) California Reporter 2d and 3d
2 (missing approx. 40 weeks case law); Shepard's - Missing Hardbound
3 Supplements issued during subscription lapse 2002 - 2004; Law Week
4 subscription stopped at Vol. 73, No. 34, March 15, 2005; West Fed-
5 eral Practice Digest 4th - Pocket Part shipment incomplete noted
6 since Dec. 2004 with no action taken to rectify. Includes request
7 for order of up-to-date Habeas Corpus Practice & Procedure for
8 AEDPA purposes (see Exhibit A). Request for Disposition on dupli-
9 cate books now one (1) year old.

10 25. I prepared another Gilmore Collection: Missing List as of March
11 22, 2006 - Exhibit H. Note lapsed subscription for: Supreme Court
12 Reports (no listed Final Editions received); West Federal Practice
13 Digest 4th - Pocket Part shipment incomplete noted since Dec. 2004;
14 Shepard's - Missing Hardbound Supplements issued during subscrip-
15 tion lapse 2002 -2004, now reported for two (2) years with no ac-
16 tion to update or order; Shepard's - all Case and Statute editions
17 expired again in December 2005. Also includes request for order of
18 up-to-date Habeas Corpus Practice & Procedure for AEDPA purposes
19 (see Exhibit A).

20 26. F.S.P. Legal Library received four (4) computers with Premise
21 software and an electronic law collection which remained unavail-
22 able to any inmate use for approximately one-year due to concern
23 over structural defects in the cabinets. After being allowed to
24 test drive one of these units I wrote Exhibit I - "Law Library Com-
25 puters" memorandum (April 26, 2006); and "Question regarding Prem-
26 ise Law Library" computer systems (May 2006), and submitted same to
27 my supervisors, F.S.P. Librarians.

1 27. The "Help" and tutorial sections of the Premise program were
2 never available to any system at F.S.P. (including Staff's). After
3 Staff received vendor training on the systems (after approximately
4 one year of sitting gathering dust), a training guide was initially
5 provided to inmates for a self-instruction tutorial on how to use
6 the electronic systems. This procedure was discontinued quickly.

7 28. I wrote a "How To" guide for utilizing the systems and submitted
8 it to F.S.P. Staff for use in providing inmates a simple guide to
9 navigating the system. To date this has never been distributed.

10 29. Due to the physical limitations of the Administrative Segrega-
11 tion "cages" inmates are placed in, and the physical layout of the
12 computer cabinets, it is impossible for Ad-Seg inmates to utilize
13 the electronic law collection. Despite assertions from CDCR offi-
14 cials (Exhibit S) there are materials on the electronic systems that
15 there are no paper copies of current.

16 30. I prepared another Gilmore Collection: Missing List as of June
17 1, 2006 - Exhibit J. Note lapsed subscription for: Barclay's Cali-
18 fornia Code of Regulations (CCR) - expired again Reg. 2006, No. 4,
19 Jan. 27, 2006 (4 months prior); Supreme Court Reports (no listed
20 Final Editions received); Shepard's - Missing Hardbound Supplements
21 issued during subscription lapse 2002 -2004; Shepard's - all Case
22 and Statute editions expired in December 2005, a six (6) month
23 lapse so far. Noted no receipt of reissue Continuing Education of
24 the Bar (C.E.B.) mandated materials. Also includes request for or-
25 der of up-to-date Habeas Corpus Practice & Procedure for AEDPA pur-
26 poses (see Exhibit A). Request for Disposition on duplicate books
27 from Sept. 2004 and seven (7) additional boxes received in July
28 2005 still reported.

1 31. After an apparent violation of rules and rights by the Board of
2 Parole Hearings (BPH) at F.S.P. in 2005 - 2006, I filed a petition
3 for writ of habeas corpus in the Superior Court. See Exhibit K -
4 Order After Return And Traverse - In re Steelman, Sacramento Supe-
5 rior Court Case # 05F06094.

6 32. The petition was denied due to my errors, but a "new rule" was
7 adopted by the BPH regarding the use of mechanical restraints at
8 parole hearings, which factored heavily into the court's denial of
9 the petition.

10 33. BPH Rule Changes (15 CCR Division 2), are not required to be
11 posted in, nor distributed for access to State prisoners. I must
12 rely on "Barclay's California Code of Regulations (CCR)" for a cur-
13 rent copy of BPH rules and regulation.

14 34. Note that CDCR and F.S.P. allowed Barclay's California Code of
15 Regulations (CCR) to expire after Reg. 2006, No. 4, Jan. 27, 2006.
16 The alleged rule change by the BPH was issued February 22, 2006. I
17 began to note this expiration in Exhibit J, June 1, 2006.

18 35. In July 2006 I initiated a CDC-602 seeking administrative remedy
19 for the out-of-date BPH regulation, see Exhibit S, which was fi-
20 nally completed in March 2007, and states that a full set of cur-
21 rent up-to-date paper material will be maintained at this time.

22 36. As of this writing in June 2007, I still only have Barclay's
23 California Code of Regulations (CCR) expired after Reg. 2006, No.
24 4, Jan. 27, 2006, on the shelf in the F.S.P. Law Library.

25 37. I finally found the supposed section of the "new rule" issued by
26 the BPH - 15 CCR § 2035, BPH Emergency Rule Change Notice RN 06-02,
27 in September 2006. I requested a copy of RN 06-02 from Mountain

1 Valley Library Service (M.V.L.S.), the contractor cited by the CDCR
2 in Exhibit S.

3 38. Exhibit L - MVLS (Mountain Valley Library Service) Request: 15
4 CCR § 2035, Sept. 13, 2006, received by me October 17, 2006. I had
5 no way to verify the implementation of RN 06-02 without a current
6 15 CCR Div. 2, and could not obtain access to one at F.S.P.

7 39. F.S.P. Law Library finally received a CD-ROM electronic update
8 to the computerized Premise Law Library systems the first week of
9 March 2007, bringing the electronic version of Barclay's CCR up-to-
10 date as of: California Register 2006, No. 49, December 4, 2006.

11 40. Another CD-ROM electronic update was received in early May 2007
12 that brought the Premise Law Library systems version of Barclay's
13 California Code of Regualtions up-to-date as of California Register
14 2007, No. 11, March 16, 2007.

15 41. Note that 15 CCR § 2035 does not exist in the versions of
16 Barclay's California Code of Regualtions available to me since 2006,
17 and I have been unable to file a petition to challenge the lower
18 court's denial based upon an "emergency" rule change by the BPH that
19 apparently does not exist, due to the deficiencies in, and long
20 standing neglect of compliance with the "Gilmore Consent Decree",
21 by the CDCR and F.S.P. Law Library.

22 42. As a point of fact, Mountain Valley Library Service (M.V.L.S.),
23 the contractor cited by the CDCR in Exhibit S, is no longer avail-
24 able to me since the contract was not renewed past Dec. 31, 2006,
25 with notice posted at F.S.P. in late October 2006. Exhibit S was
dated March 7, 2007, the Director's Reviewer and Ms. Stuter (CDCR
Principle Librarian) both "unaware" of the contract termination.

1 43. See Exhibit S, dated March 7, 2007. Director's Level Appeal De-
2 cision, Section III, paragraph 3, second sentence states: "each in-
3 stitution is also maintaining ONE up to date, complete and current
4 print law library." This is clearly incorrect, and F.S.P. Staff and
5 CDCR cannot claim their ignorance of this issue - see Exhibits Q,
6 "R", "S", and compare to Exhibit T, dated May 3, 2007.

7 44. I prepared another "Gilmore Collection: Missing List" as of Oc-
8 tober 1, 2006 - Exhibit M. Note lapsed subscription for: Barclay's
9 California Code of Regulations (CCR) - expired Reg. 2006, No. 4,
10 Jan. 27, 2006 (9 months prior); Supreme Court Reports (no listed
11 Final Editions); Shepard's - Missing Hardbound Supplements issued
12 during subscription lapse over two (2) years prior; Shepard's - all
13 Case and Statute editions expired in December 2005 (10 months
14 prior). Noted no receipt of reissue Continuing Education of the Bar
15 (C.E.B.) mandated materials. Also includes request for order of up-
16 to-date Habeas Corpus Practice & Procedure for AEDPA purposes (see
17 Exhibit A). Request for Disposition on duplicate books from Sept.
18 2004 and seven (7) boxes received July 2005 still reported.

19 45. Beginning with "Gilmore Collection: Missing List" as of October
20 1, 2006 - Exhibit M, a new section was added to denote the backlog
21 dates of the electronic law collection on the Premise systems. Note
22 that pages 5 and 6 list dates of electronic publication versus
23 print paper collection. Electronic collections of most sets any-
24 where from six (6) to nine (9) months behind actual publication
25 dates of cases. No explanation is given for the delay and the issue
26 is completely ignored by F.S.P. and CDCR - see Exhibits L and "S".

27 46. I submitted "Premise Law Library Collection" as of November 27,
28 2006 - Exhibit N. This list was presented to note problems and ex-

cessive delays with updating the electronic law collection. The most significant of these problems being:

Item # 1 - United States Code Annotated (U.S.C.A.) - EXPIRED,
system suggests we load update from "current library
disks." Unable to update till receipt of new CD ROMS.

Item # 2 - Barclay's Calif. Code of Regulations (CCR) (electronic copy) last update received Register 2006, No. 12, March 24, 2006 - seven (7) month lapse and note paper subscription expired in January 2006.

Item # 3 - California Reporter 3d Series updates are 10 months behind paper advance sheet subscriptions.

Item # 4 - Supreme Court Reporter - almost one (1) year behind paper advance sheet subscriptions.

Items # 5 & 6 - Federal Reporter 3d and Federal Supplement 2d
updates approximately 9 months behind paper advance sheet
subscriptions.

Item # 7 - Federal Appendix Series updates approximately 11 months behind paper advance sheet subscriptions.

Items # 9 & 10 - California Jurisprudence 3d and West's California Digest 2d - No way to determine current supplementation closeout dates to electronic collection, therefore no way to tell when updates are made,

47. I prepared another "Gilmore Collection: Missing List" as of December 4, 2006 - Exhibit O. Note lapsed subscriptions for:

Barclay's California Code of Regulations (CCR) - paper copy expired Reg. 2006, No. 4, Jan. 27, 2006 electronic copy expired Reg. 2006, No. 12, Mar. 24, 2006; Supreme Court Reports (no listed Final Editions received); Shepard's - Missing Hardbound Supplements issued during subscription lapse over two (2) year prior; Shepard's - all Case and Statute editions expired in December 2005 (10 months prior) Request for order of up-to-date Habeas Corpus Practice & Procedure for AEDPA purposes deleted by direction of Supervisor. Please note electronic law collection

1 listing indicating the actual backlog of this collection (6 to 10
2 months), verses the paper collection. Request for Disposition on
3 duplicate books from Sept. 2004 and seven (7) additional boxes
4 received July 2005 still reported.

5 48. I prepared another "Gilmore Collection: Missing List" as of
6 March 30, 2007 - Exhibit P. Note lapsed subscriptions for:
7 Barclay's California Code of Regulations (CCR) - paper copy ex-
8 pired Reg. 2006, No. 4, Jan. 27, 2006 electronic copy expired
9 Reg. 2006, No. 12, Mar. 24, 2006; Supreme Court Reports (no
10 listed Final Editions received); Shepard's - Missing Hardbound
11 Supplements issued during subscription lapse over two (2) year
12 prior. Please note electronic law collection listing indicating
13 the actual backlog of this collection verse the paper collection.
14 Daily Journal Subscription Expired April 2006, with delays in up-
15 dates to electronic collections this leaves "current" cases to
16 advance sheet publication which are one (1) to six (6) months be-
17 hind current date unless advance sheet is lost or not received.
18 CDCR Department Operation Manual (D.O.M.) - current pub is May
19 2000 - do not have complete list of updates, revisions, changes,
20 additions, deletions, nor local supplements or Operational Proce-
21 dures. Request for Disposition on duplicate books from Sept. 2004
22 and seven (7) additional boxes received July 2005 still reported.

23 49. I submit Exhibit Q - Inmate Appeal CDC-602, Log. # 06-00386. I
24 began this appeal March 10, 2006, and completed Director's Level
25 Review April 9, 2007. The issue complained of was the expiration
26 of Shepard's Citations in December 2005 (see Exhibit G). The ap-
27 peal was "Granted" by FSP Warden at Second Level, mid-July 2006.

1 50. Exhibit Q notes the confusion of who is supposed to order the
2 Shepard's Citations subscriptions. While the Warden's grant
3 states the books will be ordered immediately (mid-July), it takes
4 until mid-November 2006 to renew the subscriptions and begin re-
5 ceiving books. While this appeal was being "denied" at Third
6 Level due to my failing "to provide any new or compelling evi-
7 dence to warrant a modification", all Shepard's Case Name Cita-
8 tors had expired in 2006, and all other Shepard's Citation sub-
9 scriptions were again allowed to expire in February 2007 (the
10 same subscriptions that were renewed in November 2006). See Ex-
11 hibit T and U, ante, and see Exhibits E, F, G, H, J, M, R, S, T
12 and U's list of Shepard's missing hardbound volumes that have not
13 been ordered / purchased.

14 51. I submit Exhibit R - Inmate Appeal CDC-602, No Log Number due to
15 being "Granted" at informal level. This Appeal was submitted Sep-
16 tember 26, 2006 and Granted Octobr 25, 2006, trying to obtain
17 compliance with Exhibit Q's granting of the Shepard's Subscri-
18 tion renewal in mid-July 2006. Approximately one month later FSP
19 Law Library did begin to receive the Case and Statute Editions of
20 Shepard's, however all Case Name Citators (California, Ninth Cir-
21 cuit, and U.S. Supreme Court), had lapsed and were not renewed.

22 52. I submit Exhibit S - Inmate Appeal CDC-602, Log. # 06-01137. I
23 submitted three (3) separate Inmate Appeals in July 2006 which
24 were combined under FSP Log No. 06-01137 and received final Di-
25 rector's Level Review, and Denial March 7, 2007, returned to me
26 in late May 2007.

1 53. Please see Exhibit S, Director's Level Review sheet, Section
2 III. Director's Level Decision: Appeal Is Denied. Please note the
3 following discrepancies:

4

- Nothing is stated regarding the delays and missing CD-ROMs for
5 the electronic law collection;
- No mention is made of the discrepancies of missing books not
6 ordered for over two (2) years (and still missing now);
- No mention is made of the paper Barclay's Calif. Code of Regu-
7 lations being expired for eighteen (18) months, despite the as-
surance that one complete up-to-date copy of all paper Gilmore
8 Collection material will be maintained at the prison;
- The Director's reviewer and Ms. Stuter (CDCR Principle Librar-
9 ian) seem unaware that the Mountain Valley Library Service
(MLVS) contract was terminated December 31, 2006, after ap-
10 proximately 90 days advance notice to us in the prison;
- Note that MLVS contract is but one reason to deny my requested
11 relief to basically comply with the Gilmore Consent Decree, of
which most of the included Exhibits denote the consistent fail-
12 ure of since 2005.

13 54. I prepared another "Gilmore Collection: Missing List" as of May
14 3, 2007 - Exhibit T. Please note the following discrepancies:

15 Barclay's California Code of Regulations (CCR) - paper copy ex-
16 pired Reg. 2006, No. 4, Jan. 27, 2006; Supreme Court Reports (no
17 listed Final Editions received); Shepard's - Missing Hardbound
18 Supplements issued during subscription lapse over two (2) year
19 prior; Shepard's all Case Name Citators expired in 2006; all
20 Shepard's Citations (Case and Statute Editions) again allowed to
21 expire in February 2007 (the same subscriptions that were renewed
22 in November 2006). Note electronic law collection listing indi-
23 cating the actual backlog of each set varies from six (6) to ten
24 (10) months behind the paper collection. CDCR Department Opera-
25 tion Manual (D.O.M.) - current pub is May 2000 - do not have com-
26 plete list of updates, revisions, changes, additions, deletions,
27 nor local supplements or Operational Procedures. Request for Dis-

position on duplicate books from Sept. 2004 and seven (7) additional boxes received July 2005 still reported (at least \$4,000 dollars unnecessarily wasted on this stack of boxes).

55. The first week of May 2007, I submitted an Inmate Appeal (CDC-602) to my Supervisor, the FSP Sr. Librarian, regarding the expired Shepard's Citations. This 602 was "lost". In mid-June, I rewrote the 602 and resubmitted in the futile attempt to get someone to pay attention to the problems detailed herein.

56. I prepared another "Gilmore Collection: Missing List" as of June 19, 2007 - Exhibit U. Please note the following discrepancies: Barclay's California Code of Regulations (CCR) - paper copy expired Reg. 2006, No. 4, Jan. 27, 2006; Supreme Court Reports (no listed Final Editions received); Shepard's - Missing Hardbound Supplements issued during subscription lapse over two (2) year prior; Shepard's all Case Name Citators expired in 2006; all Shepard's Citations (Case and Statute Editions) again allowed to expire in February 2007 (the same subscriptions that were renewed in November 2006). Note electronic law collection listing indicating the actual backlog of each set varies from six (6) to ten (10) months behind the paper collection. CDCR Department Operation Manual (D.O.M.) - current pub is May 2000 - do not have complete list of updates, revisions, changes, additions, deletions, nor local supplements or Operational Procedures. Request for Disposition on duplicate books from Sept. 2004 and seven (7) additional boxes received July 2005 still reported.

57. As of the most recent update to the (electronic version)
Barclay's California Code of Regulation, 15 CCR, Register 2007,

No. 11, March 16, 2007, I can find no record of 15 CCR § 2035, despite Exhibit L received from Mountain Valley Library Service. I can find no record of it being enacted, submitted, withdrawn, or deleted from 15 CCR Division 2 since the electronic version of Barclays California Code does not contain a "Digest Of New Regulations", "Summaries Of New Regulations", or even an "Update History" to notify a user of any missing updates or registers.

58. I am unable to adequately research and prepare a further habeas corpus petition due to the deficiencies listed in this declaration and the submitted Exhibits to this motion.

59. I am, and will again be subject to appear before the Board of Parole Hearings (BPH), at a scheduled Hearing in January 2008, and I have no ability to adequately prepare and research issues for submission or presentation to the BPH, again due to the discrepancies listed herein, and supported by the attached Exhibits.

60. I am currently filed in the local superior court over an underground rule used to deny a voluntary transfer, that will requiring additional research and briefings, and will most likely need materials that are not available to me due to the discrepancies listed herein.

61. I am, and have been subject to the systematic denial of the basic Constitutional Right of Access To The Courts, due to the state created impediment of failure to maintain an up-to-date set of legal materials the State consented to in the original Gilmore Consent Decree.

62. Lack of even this limited collection of materials places me in the further position of being unable to present violations of Due

2 Process Of Law, and Equal Protection Of The Law, that are rou-
3 tinely incurred in the prison setting.

4 63. I am at a further disadvantage if placed in Administrative Seg-
5 regation since the electronic collection is physically inaccessi-
6 ble to Ad-Seg inmates placed in security cages when physical ac-
7 cess to the Law Library is granted.

8 64. These deprivations due to my incarceration and poverty are in
9 direct violation of the existent Gilmore Consent Decree, and can-
10 not be justified by the State or State Officials since, as demon-
11 strated by Exhibits A through U, I have made reasonable attempts
12 to resolving this matter for over three (3) years, been ignored,
13 and continue to be ignored.

14 **ADDENDUM TO ORIGINAL SUBMISSION FOR EVENTS AFTER AUGUST 2007**

15 65. After my original submission of this filing, the Court dis-
16 missed the action in August 2007, instruction me to go through
17 "class counsel," the complete set of events following that is
18 explained in the accompanying "Motion For Leave To Proceed Pro
19 Se Or Motion To Appoint Independent Counsel; With Declaration
20 In Support", included with this filing.

21 66. On October 1, 2007, I filed a new CDC-602 (see Exhibit "V"),
22 combining the Director's Level Responses my prior Inmate Ap-
23 peals (CDC-602's) (see Exhibits "Q" and "S"), noting that the
24 Director's reply indicated that the Gilmore Collection was to
25 be maintained, and kept current, while the reality was that the
26 list of Missing Gilmore Materials List I'd created in June 2007

(see Exhibit "U", also included with the resubmission of the 602), showed the Director's response was incorrect.

67. This appeal was summarily denied in three (3) days, stating that I'd submitted a duplicate appeal, and that my prior appeals had been denied, therefore I had no appealable issue.

68. The above denial by the FSP Appeals Coordinator shows that I have no administrative remedy available.

69. On February 10, 2008, I compiled a new "Gilmore Collection: Missing List", included herein as Exhibit "W", showing that all of the preceding discrepancies still existed, and all book sets with annual updates had the subscriptions expire in July 2007.

70. The Declaration and Exhibits included with my "Motion For Leave To Proceed Pro Se Or Motion To Appoint Independent Counsel", demonstrates that I have no assistance from "class counsel" in this matter.

111

VERIFICATION

I am the declarant and movant in the above cause of action. I have read the statements herein, and declare under penalty of perjury that the above statements are true and correct.

Date:

RESPECTFULLY SUBMITTED,

FEB 22 1981

John Steelman, D-30388, Pro se

MEMORANDUM OF POINTS AND AUTHORITIES

Movant, a state prisoner proceeding pro se, is a member of the "Gilmore" plaintiff class in which the above case has been decided and consent decrees stipulated to by the parties.

Movant invokes the protection afforded by this court in its Order Settling and Dismissing Action, Sept. 28, 1978, stating that the above named action shall be dismissed "subject to the right of plaintiffs to file a petition with this court to seek enforcement with the provision of this Court's order of October, 16, 1972.

The California Department of Corrections and Rehabilitation (CDCR), has set forth in the California Code of Regulations (CCR):

Title 15 CCR § 3002(b)(7): That each inmate / parolee shall be advised of "(7) The facility location where the Board of Prison Terms' Rules may be reviewed by the inmate." [emphasis added, note Penal Code § 5076.2 orders that CCR Title 15 Div. 2 also be made available to the public and therefore logically necessary for life-term prisoner's parole hearings];

15 CCR § 3002(c) "The issuance of rules and regulations and program information summaries, and the inmates' receipt of same is required in order to comply with Sections 2080 and 2930 of the Penal Code....";

15 CCR § 3122(a) "each facility shall provide legal materials through its law library to provide inmates with meaningful access to the courts...." [emphasis added];

15 CCR § 3160(a) "Inmate access to the courts shall not be obstructed." (emphasis added); and

15 CCR § 3000.5 Rules of Construction "(c) Shall is mandatory...." (emphasis added).

Currently at Folsom State Prison, the current paper copy of the Title 15, Div. 2 (15 CCR) expired in January 2006, despite the granted Inmate Appeals stating that a complete current paper set of legal materials will be maintained. It was a full year before the prison's law library received an electronic update to the Title 15,

1 rent rules and regulations mandated by State law and administrative
2 regulations to be available to movant, despite repeatedly receiving
3 "granted" inmate appeals.

4 This injury will be redressed by the requested relief, in that
5 petitioner will be able to properly present his claims and grievances
6 to the courts in an appropriate manner and properly research his con-
7 tentions, allegations, and responsive pleadings.

8 The right of access to the courts ensures that the unlawfully de-
9 tained obtain their freedom, Johnson v. Avery, 393 U.S. 483, 485,
10 21 L. Ed2d 718, 89 S. Ct. 747, 749 (1969), and that the lawful
detained have recourse for violations of fundamental constitu-
tional rights.

11 Wolff v. McDonnell, 418 U.S. 539, 579 (1974)

12
13 "Bounds,... guarantees no particular methodology but rather the
14 conferral of a capability - the capability of bringing contem-
15 plated challenges to sentences or conditions of confinement be-
16 fore the courts. When any inmate, even an illiterate or non-
17 English-speaking inmates, shows that an actionable claim of this
18 nature which he desired to bring has been lost or rejected, or
19 that presentation of such a claim is currently being prevented,
20 because this capability of filing suit has not been provided, he
21 demonstrates that the State has failed to furnish "adequate law
22 libraries or adequate assistance from persons trained in the
23 law," Bounds, 430 U.S. at 828 (emphasis added). Of course, we
24 leave it to prison officials to determine how best to ensure that
25 inmates with language problems have a reasonably adequate oppor-
tunity to file non-frivolous legal claims challenging their con-
victions or conditions of confinement. But it is that capability,
rather than the capability of turning pages in a law library,
that is the touchstone."

26 Lewis v. Casey, supra, 518 U.S. at 356.

27 Bounds and Lewis both impose an affirmative duty on the state to
28 provide petitioner with access to an "adequate law library" or "ade-
quate assistance from persons trained in the law."

26 Movant has been denied access to the current rules and regula-
27 tions of the Board of Prison Terms (now Board of Parole Hearings,
28 "BPH"). Significant rules changes were made in February 2006, and a

copy is still not available to prisoners at Folsom State Prison. This and other rotating deficiencies in the legal collection has resulted in complete denial of the ability to prepare and present a petition to the State court, frame a legal or constitutional argument, and in this case seek redress of violations of law.

Neither CDCR nor the Warden of Folsom State Prison have shown, nor been required to show, that a Constitutionally sound program to assist or assure inmates access to the courts, is in place, or even exists. Movant exhibits demonstrate clearly that prison's legal library has not been in compliance with the "Gilmore Collection" for the past several years.

The United States Supreme Court has stated that,

"the Fourteenth Amendment due process claim based on access to the courts ... has not been extended by this Court to apply further than protecting the ability of an inmate to prepare a petition or complaint." Wolff, 418 U.S. at 576, 94 S. Ct. at 2984."

Cornett v. Donovan, 51 F.3d 894, 899 (9th Cir. 1995).

"In the leading case on the right of access, the Supreme Court continued to state that its 'main concern' was "'protecting the ability of an inmate to prepare a petition or complaint.'" Bounds, 430 U.S. at 828 n.17, 97 S.Ct. at 1498 n.17 (quoting Wolff, 418 U.S. at 576,) (emphasis added). The Court adds that a competent lawyer would not 'file an initial pleading' without researching a number of issues, including the facts necessary to 'state a cause of action' Id., 430 U.S. at 825, 97 S. Ct. at 1497. The Court later reiterated that legal research or advice was necessary 'to make a meaningful initial presentation' to a trial court. Id. at 828, 97 S.Ct. at 1498 (emphasis added).

Finally, the Court held the right of access required that prisons assist inmates 'in the preparation and filing of meaningful legal papers.' Id."

Cornett, supra, 51 F.3d at 898.

"Indeed, despite the 'less stringent standards' by which a pro se pleading is judged, [] it is often more important that a prisoner complaint set forth a nonfrivolous claim meeting all procedural requirements...."

Bounds, supra, 430 U.S. at 825-826

In Mendoza v. Carey, 449 F.3d 1065, Judge Kleinfeld's thoughtful dissent articulates the problem.

"The real problem is that because inmates are not entitled to appointed counsel for habeas petitions they have little hope of understanding the myriad subtleties and intricacies of habeas law. It is a subject that challenges the most capable lawyers and judges"

Mendoza, supra, 449 F.3d at 1074-1075 (footnote omitted)
The question must be asked: How much more difficult will seeking
any relief be without even the most minimal requirement of the cur-
rent rules and regulations being challenged?

Despite CDCR's and Folsom State Prison's stating that movant's Inmate Appeals are either partially granted or granted (see exhibits), identification and procurement of the missing books has not been accomplished. CDCR Librarians, and the Principle Librarian must at a minimum have a Masters Degree in Library Sciences. Yet they are unable to renew a short list of publications annually and verify and order missing books from a prepared list.

CONCLUSION

Movant respectfully requests the Court grant his Motion To Seek Administrative Relief In Accordance With Local Rules Of Court Civil L.R. 7-11, and issue appropriate orders upon the CDCR and Folsom State Prison as stated in his motion.

Movant further requests the Court issue any further orders or remedies that the Court deems proper and just.

Date:

Respectfully submitted,

FEB 28 1968

John Steelman, D-30388